

## Stage 4 | Professional Conduct Committee

### *Convening The Professional Conduct Committee*

52. Once a case is referred by Case Examiners to Committee or if the Registrant/Trainee has not fully accepted the Case Examiners' recommendations on sanction within 20 days, NRCPD will take the necessary steps to convene a Professional Conduct Committee on a suitable date and for the number of days required, typically three to five days. To ensure availability of all involved, it may not be possible for the hearing to be on consecutive days but to be arranged over a period, that period being as short as possible.
53. Registrant/Trainees are expected to prioritise attendance at a hearing above all other professional commitments in view of the challenge to their professional conduct that charges before a Professional Conduct Committee represent.
54. The case will be brought by the NRCPD as complainant and will be contested by the Registrant/Trainee as the respondent. The NRCPD and the Registrant/Trainee are the parties to the case.

### *Make-Up of the Professional Conduct Committee*

55. The Professional Conduct Committee will consist of three members:
  - a. two retained professional standards advisers with experience and status in the professional fields covered by the NRCPD, or in the training, assessment, use and employment of Registered professionals in the deaf and deafblind field; and
  - b. one retained legal professional, someone who is neither a Registrant nor a Trainee, with either a legal or professional regulation background and with experience in relevant tribunals, disciplinary committees or professional conduct hearings.

The retained legal professional will chair the Professional Conduct Committee.

56. No person shall be appointed to the Professional Conduct Committee:

- a. who has previously been involved in the case or the investigation;
- b. who has significant prior knowledge of the reported misconduct; or
- c. who has significant prior knowledge of the Registrant/Trainee or the witnesses involved in the case,

to the extent that that this would bring into question the fairness of any hearing.

57. NRCPD will appoint an independent legal adviser (normally a barrister) to support the Professional Conduct Committee to advise on relevant law and on process or procedure. All legal advice provided to the Committee will be shared with the parties who will be able to challenge such advice if they so choose. The legal adviser to the Committee is wholly independent and plays no role on behalf of either of the parties to the case.
58. In addition to any expert witness statements obtained by the parties to the case, the Professional Conduct Committee may instruct further professional expert opinion to support their consideration of the case. The parties will be informed of any such expertise received by the Professional Conduct Committee and will be able to challenge this expertise if they so choose.

### *Notice and Arrangements for the Hearing*

59. Responsibility for Setting up the Hearing. The Professional Conduct Manager, or someone in the Professional Conduct Team on their behalf, will make all the administrative arrangements for the hearing and facilitate any requests from the Committee.
60. Communication about the Hearing. All correspondence relating to the hearing will be sent to all parties by email and require acknowledgement. Additionally, paper copies of the notice of the hearing, charges and the evidence bundle for the hearing will be sent by registered, recorded or special delivery mail to the Registrant/Trainee; and also to the Committee if required. Other documents may be sent by registered, recorded or special delivery mail as required for the efficient management of the case. The Registrant/Trainee will be written to at the address and email address which the Registrant/Trainee last provided to the NRCPD.

61. Giving Notice of the Hearing. The Professional Conduct Manager will give notice of the hearing to the Registrant/Trainee at least 40 working days' in advance, and provide them with information on Committee procedure and on preparing for the hearing. The notice to the Registrant/Trainee will include dates, timings, location, the identity of the committee and other administrative detail. Hearings will normally take place remotely via video conference but application can be made by either party for the hearing to be conducted in person.
62. Reasonable Adjustments. The Registrant/Trainee will be invited to notify The Professional Conduct Manager as soon as possible of any reasonable adjustment requests to enable a fair access to the hearing process.
63. Service of the NRCPD Case and Evidence. Also provided with the notice of the hearing, or as soon as possible afterwards, is a full list of all the charges or allegations to be presented at the hearing and all the evidence to be relied on by the NRCPD, along with information on any witnesses NRCPD intend to call. All subsequent evidence or information which arises in the NRCPD case shall be sent to the Registrant/Trainee immediately.
64. Service of the Registrant/Trainee's Evidence. The Registrant/Trainee will provide the Professional Conduct Manager with details of witnesses the Registrant/Trainee intends to call and all evidence, statements or documents they intend to rely on in their case, within 20 working days after receipt of the notice of a hearing. Significant importance should be placed on this point by any Registrant/Trainee subject to a Professional Conduct Committee hearing: it is not the responsibility of the Professional Conduct Manager to decide on and collate the evidence upon which any Registrant/Trainee intends to rely on at the hearing, even if submitted to NRCPD by the Registrant/Trainee as part of the initial investigation process. The Professional Conduct Manager can provide to the Registrant/Trainee copies of any evidence previously submitted if requested.
65. Service of the Full Hearing Bundle. Once the Registrant/Trainees evidence pack is received it will be added to the NRCPD's evidence and other materials for the hearing and finalised as the hearing bundle. It will be sent to all parties, committee members, and the legal adviser 10 working days before the hearing, or as soon after that as possible.

66. Registrant/Trainee Attendance and Representation. The Registrant/Trainee will be asked to confirm their attendance, whether they will be represented (and if so by whom, see sections 78 and 79 below) and if not attending or represented whether they wish to submit a written defence of their case. Such written submission should be received by NRCPS 5 working days before the hearing convenes.

### *Preliminary Steps at the Hearing*

67. At the hearing, the Professional Conduct Committee will hear the misconduct allegations and consider all the available evidence. The Professional Conduct Committee considers the case afresh, and without any knowledge or awareness of any considerations or reasoning by Case Examiners. Where there are procedural matters to decide before the hearing of charges and evidence begins, the Professional Conduct Committee may decide to issue case management directions. Examples include, but are not limited to: requiring the hearing in private, changing from a remote to an in-person hearing or delay for health reports.

68. Consideration of Health and Disability Matters. On completion of preliminary matters the Professional Conduct Committee may invite arguments from all parties on matters of the Registrant's health and disability in relation to the events giving rise to the allegations of misconduct; or in relation to reasonable adjustments that may be requested to enable the registrant to fairly participate in proceedings. Such matters will be dealt with in private session. The Committee may then make any necessary directions for progressing the case fairly as it deems necessary and/or practical. This may include adjournment, requests for additional medical reports or evidence, or for additional practical measures to be put in place for the hearing.

69. Evidence available to the Committee. The Professional Conduct Committee may hear any evidence that would be admissible in civil proceedings in the appropriate part of the United Kingdom, and may decide to admit further evidence during the hearing if it would be helpful to the Professional Conduct Committee and in the interests of a fair hearing to do so. The purpose of submitting all the evidence in advance of the hearing is so all parties may prepare properly.

- a. The Committee may admit evidence served outside the timetable for service of evidence if it assists the Committee in making their decision and it is in the

interests of justice and the public interest; and may allow itself and the parties additional time to consider new evidence.

- b. Other factors the Committee will consider in its decision to admit late evidence include whether the evidence is relevant and substantial, and the impact on delay and the availability of witnesses attending in-person.

### *Hearing the Evidence and Deciding on Charges and Sanction – Overview*

70. Hearing the Evidence. The Professional Conduct Committee considers the case afresh, and without any knowledge or awareness of any considerations or reasoning by Case Examiners. The Committee will hear the misconduct allegations and consider all the available evidence. All parties and the Committee will have the chance to ask questions regarding the evidence and both parties will be able to state their arguments for or against the charges.
71. Deciding on the Charges. The Professional Conduct Committee will then consider and decide on the facts in regard to each of the charges, that is to say on the balance of probabilities, whether there was a breach of the Code of Conduct. The Committee will decide on each charge individually whether it is upheld or not.
72. Deciding on Misconduct and whether Practice is Affected. If the Committee decides there is at least one breach of the Code they will then go on to decide whether on the evidence, the Registrant/Trainee's practice is still affected and what the appropriate sanction should be. Whether practice is still affected will be a factor in the Committee's choice of sanction. The Committee will hear further evidence from both parties on mitigation, character, impact statements and other relevant material to assist in their decision.
73. Deciding on the Sanction. Finally, if there is at least one breach of the Code, the Committee will decide what sanction or sanctions to award and may decide on one or more of the following:
  - a. any sanction that may be recommended by Case Examiners;
  - b. a restriction order limiting practice in certain settings or specialisms for up to 12 months
  - c. suspension from the registers for a period to be determined by the Committee,

of up to twelve months; and/or

d. permanent removal from the registers.

74. Previous NRCPD Misconduct Findings. Where a Registrant/Trainee has in-date findings against them following previous breaches of the code, the Professional Conduct Committee will be informed of this after they have upheld one or more of the charges but before they consider which sanction to apply. It is for the Committee's discretion how this will be taken into consideration.
75. Variation in Hearing Procedure. The Professional Conduct Committee may vary the exact procedure for the hearing with advice from the appointed legal adviser if it is in the interests of justice and/or for the efficient conduct of proceedings to do so.
76. Right of Appeal. If the Registrant/Trainee is awarded any sanction by the Professional Conduct Committee they may lodge an appeal against the outcome within 20 days.
77. Publication of Outcome. Unless under appeal, sanctions given to the Registrant/Trainee by the Professional Conduct Committee will be published on the NRCPD website and the electronic record and case materials will be retained. Summary details of the findings will be published, and the Registrant will be named if the sanction is a restriction, suspension or removal.

### *Committee Proceedings in Detail*

#### **Representation**

78. The Registrant/Trainee may appear in person or be represented at the hearing by a solicitor, barrister, Trade Union Representative, or by a 'McKenzie friend' or other appropriate person. If they wish to be represented, it is the Registrant/Trainee's responsibility to make the arrangements and to notify the Committee and the NRCPD as soon as possible. A person who is represented at the hearing shall be treated for the purposes of these procedures as having attended the hearing even if they are not present themselves in person.
79. If unrepresented, the Registrant/Trainee may also submit their defence and mitigation in

writing, without attending in person. The Professional Conduct Committee shall consider a written defence as part of the hearing and determine the weight to attach to it, taking into account that the Registrant/Trainee has not made themselves available to answer questions about their case and evidence.

80. NRCPS may appoint a member of staff, solicitor, barrister or another suitable person to present its case to the Professional Conduct Committee.

### **The start of the hearing**

81. At the start of each hearing:

- a. The identity of the Registrant/Trainee and all parties present shall be confirmed;
- b. the procedure for the hearing shall be explained;
- c. the charge or charges shall be read out;
- d. and for each charge as read out, the Registrant/Trainee, or their legal representative, shall be asked whether the facts alleged are admitted.

82. The Chair of the Professional Conduct Committee may at any stage of the hearing, on behalf of the Committee, or if applied for by either party, decide to pause the hearing and postpone it (adjourn) to a later date. It must be in the interests of justice and a fair hearing to do so and applications for adjournment by parties must set out the specific reasons.

83. If, upon application or upon legal advice, it appears to the Chair that a charge should be amended, the Chair shall give such directions for the amendment of the charge as they may think necessary to meet the circumstances of the case, unless, having regard to the merits of the case, the required amendments cannot be made without unduly prejudicing the Registrant/Trainee's case.

### **Uncontested charges**

84. Where the Registrant/Trainee admits, either in writing or present at a hearing, alleged facts and one or more charge of misconduct, or that their practice is still affected in relation to any charge or charges against them, the Professional Conduct Committee shall consider that all such admitted facts, charges and affected practice have been

proven. The Committee will then go on to hear the evidence of the charges still contested.

85. Where the Registrant/Trainee admits, either in writing or present at a hearing, all charges, the Committee shall declare all charges as proven and then move to determine misconduct, whether practice is affected and the appropriate sanction. The Committee will invite further evidence from both parties to inform the Committee's decision on sanction:

- a. The NRCPD shall then provide evidence of the circumstances leading to the charges, any aggravating factors, and on the character of the Registrant/Trainee, and any relevant previous history of the Registrant/Trainee, or other evidence relevant to the decision on sanction.
- b. The Registrant/Trainee or their legal representative shall then be invited to address the Professional Conduct Committee on any mitigation and may present evidence as to the circumstances leading up to the relevant facts, the extent to which such facts relate to the matters set out in the charges, and their character and previous history.

86. Where all charges are admitted, and having received relevant additional evidence from either or both parties on sanction and mitigation, the Committee will retire to deliberate the appropriate sanction. Where some, but not all, of the charges are admitted, the Committee will not decide on sanction for the admitted charges but will proceed to hear the evidence on the remaining contested charges as below.

### **Contested charges with the Registrant/Trainee present**

87. In a case where a Registrant or Trainee does not admit all the charges, the following order of proceedings will be followed as far as reasonably possible. The Committee may vary the exact procedure with advice from the appointed legal adviser if it is in the interests of justice and/or the efficient conduct of proceedings to do so.

88. Hearing the NRCPD's Case and Evidence. The NRCPD will outline the case against the Registrant/Trainee, present the facts and present evidence on which the allegations of misconduct are based. Witnesses may be called to provide evidence (all Witnesses will be expected to give an affirmation unless they have indicated a preference for another religious oath). The Registrant/Trainee will have the opportunity to cross examine any



witnesses. The NRCPD will then have the opportunity to re-examine any witnesses on issues raised in cross examination.

89. No Evidence Offered. If in respect of any charge, no evidence is offered by NRCPD, the Professional Conduct Committee will announce a finding that the charge shall be dismissed.
90. Application to Dismiss Charges for Error or Lack of Evidence. After the NRCPD has presented its case on all the charges, the Registrant/Trainee or their legal representative may make the following submission relating to any charge: -
- a. that insufficient evidence has been presented upon which the Professional Conduct Committee could find the charge proved;
  - b. that a procedural flaw or error has been committed which should result in a charge being dismissed; or
  - c. that relevant law, including case law or other legal guidance, suggests that the charge should be dismissed.
91. If such a submission is made, the Professional Conduct Committee will invite the NRCPD to respond to the submission, seek any relevant legal advice, consider and determine whether the submission should be upheld and, if the Committee agrees, they shall record a finding that the relevant charge shall be dismissed.
92. Hearing the Registrant/Trainee's Case and Evidence. The Registrant/Trainee or their representative may then open their case to contest any charge which remains outstanding. The Registrant/Trainee may present the evidence they have admitted to the hearing bundle in answer to any such charge. Witnesses (whom the Registrant/Trainee has indicated they intend to call in accordance with timescales set out at section 60 above) may be called by the Registrant/Trainee to provide evidence. The NRCPD shall have the opportunity to cross examine any witnesses. The Registrant/Trainee will then have the opportunity to re-examine any witnesses on issues raised in cross examination.
93. Questions from the Professional Conduct Committee. The Professional Conduct Committee has the right to ask questions of witnesses giving evidence before them at any stage. Usually, the Committee will ask questions after the witness has been cross examined. The Committee may rely on the independent legal adviser at any stage in

proceedings for advice on matters of law and procedure, and may adjourn to do so.

94. Summary of the NRCPD Case. The NRCPD may then address the Professional Conduct Committee to summarise the facts of the case as presented by the NRCPD.
95. Summary of the Registrant/Trainee's Case. The Registrant/Trainee or their representative may then address the Professional Conduct Committee to summarise the facts of the case as presented by or on the Registrant/Trainee's behalf.

### **Contested and uncontested charges without the Registrant or Trainee present**

96. Confirming Service of Notice to the Registrant/Trainee. Where the Registrant/Trainee does not appear and is not represented and has not presented their case in writing, the Chair of the Professional Conduct Committee will ask the NRCPD to satisfy the Committee that notice for the hearing has been sent to the Registrant/Trainee as required, informing them of the hearing, the date upon which the hearing was to take place and where it was to take place (including whether remotely by video conference). If it appears to have been properly sent then the Committee shall consider the Registrant/Trainee to be voluntarily absent from the hearing and go on to consider whether or not to proceed in the absence of the Registrant/Trainee. If it does not appear to have been properly sent, the Committee may adjourn the hearing to another date.
97. Proceeding in Absence. The Professional Conduct Committee will decide whether to proceed with the hearing in the absence of the Registrant/Trainee if notice of the hearing was properly given.
- a. Factors. Factors the Committee will consider when deciding whether to proceed in the absence of the Registrant/Trainee or not, include whether or not the absence is deliberate, (e.g. they have made their case in writing because they would not attend), whether an adjournment might result in the Registrant/Trainee's attendance, whether further delay to the proceedings is in the interest of justice, and the extent to which adjournment affects the availability of witnesses.
  - b. Procedure. Where the Registrant/Trainee does not appear and is not represented, and the Professional Conduct Committee has decided to proceed with the hearing, it shall hear evidence of the case presented by the NRCPD (as in sections 88-89) and any written submissions or evidence submitted by the Registrant/Trainee

(instead of the procedure at sections 90 to 92). The Committee will decide whether the evidence supports the charges.

If the Committee decides not to proceed in the absence of the Registrant/Trainee the hearing will be adjourned and arranged to reconvene at a later date.

### **Deciding on the Charges and Sanction**

98. Deciding on the Charges. On the conclusion of the proceedings above, the hearing will adjourn and the Professional Conduct Committee will consider in private session what they have heard and seen as evidence and come to an agreement on each outstanding charge. The Committee must consider whether each of the charges are supported by the evidence and dismiss those charges which are not.
99. The Burden and Standard of Proof. The Burden of Proof lies with the NRCPD, that is it is for the NRCPD to prove the charges. The Standard of Proof to be used by the Professional Conduct Committee when weighing the evidence is the civil law standard, 'on the balance of probabilities', that it is more likely than not that there was a breach of the Code of Conduct in relation to the particular charge.
100. Notifying the Decisions on Charges. The Committee will make their findings known to the NRCPD and the Registrant/Trainee on each of the charges once decided. The decision on each charge may be given orally when the hearing reconvenes that day or the following day. Alternatively, if the hearing has adjourned to reconvene much later the Committee may provide its finding on each of the charges in writing.
101. Deciding on Misconduct, Affected Practice and Sanction. It is then for the Professional Conduct Committee to decide whether in relation to each proven charge there was professional misconduct, gross professional misconduct, and whether practice of the Registrant/Trainee is still affected.
- a. The Committee will invite submissions from both parties on these points.

- b. The NRCPD shall in its submissions on these points inform the Professional Conduct Committee of any previous adverse misconduct findings in relation to the Registrant/Trainee. NRCPD may also include other matters which should be drawn to the Committee's attention that are relevant to the decision on sanction, for example aggravating factors in the misconduct, the Registrant/Trainee's insight, the nature of any program of training or supervision or the term of any sanction. The NRCPD may also include impact statements from those most affected by the misconduct and arguments about public protection.
- c. The Registrant/Trainee may consider including in their submission evidence on character, mitigation, subsequent training and other points relevant to the decision on sanction as they see fit.
- d. If the Professional Conduct Committee considers that one or more proven charges do not amount to professional misconduct or gross professional misconduct, it shall dismiss such charges.
- e. Where the Professional Conduct Committee finds that, for one or more proven charge, the conduct of the registrant/Trainee amounts to professional misconduct or gross professional misconduct, it shall go on to consider whether the Registrant/Trainee's practice is still affected.
- f. Finally, the Committee will decide on the appropriate sanction or combination of sanctions. The Committee does not have the power to award sanctions other than those set out in section 73. but may specify additional lawful and reasonable terms or conditions for the implementation of and compliance with any such sanction. In the case of a sanction of removal from the registers, the only term or condition the Committee may set is to allow the Registrant/Trainee to apply to rejoin the registers at some future time not less than six years from the date of the sanction being awarded.

102. If the Professional Conduct Committee is considering imposing requirements to undertake remedial action or training, it shall inform the Registrant/Trainee and consider any representations the NRCPD or the Registrant/Trainee may make as to such requirements before making such a decision.

103. Notifying the Committee's Full and Final Decisions. The Professional Conduct Committee will deliberate all matters in private. Once the Committee has made all decisions and directions it is required to, it shall communicate these orally to the hearing if it is reasonable and practical to reconvene. Whether decisions are communicated orally or not, the Committee will communicate its full set of decisions in writing within 10 days setting out the reasons for each decision. The parties will be informed of the Committee's decisions and sent the full written decisions as quickly as possible by email and also by recorded, registered or special delivery mail.

### *Follow up actions to the Committee's Final Decision*

104. Right to Appeal. The Registrant/Trainee has 20 working days from being sent the written Committee decision to request an appeal of all or any part of that decision. The appeal request must comply with the rules for appeal set out from section 108 below if it is to be accepted.

105. Implementation and Publication of Outcome. Any sanction handed down will not be implemented or published until after the appeal window closes:

- a. If within 20 working days no appeal has been accepted, the sanction is implemented immediately and any Interim Suspension or Interim Restriction that is still in place is immediately discontinued. The case outcome is published as set out in section 77 above.
- b. If an appeal is accepted within 20 working days, implementation and publication of the sanctions and case outcome is paused until the appeal has been heard (or is discontinued). Any Interim Suspension or Interim Restriction remains in place in line with the procedures for Interim Suspensions and Restrictions, and until the Registrant/Trainee's appeal is heard.

106. Sanction Compliance. The Registrant/Trainee's compliance with any sanction will be monitored. NRCPD will issue confirmation of the terms, conditions and time period of the sanction, and in the case of a program of training and/or supervision, will issue the Registrant/Trainee with instructions for periodic reporting of attainment and attendance

in line with the Committee's decision.

107. Sanction Non-Compliance. If there is evidence of a lack of compliance with any Committee sanction the Professional Conduct Manager will refer the matter to a retained legal professional. The Registrant/Trainee will have the opportunity to provide written reasons why they have not complied with the Committee's sanctions. The retained legal professional will decide if the matter shall be referred to another Professional Conduct Committee as a breach of the original Committee's directions and therefore a further breach of the Code of Conduct. If proven, failure to comply with sanctions issued by a Professional Conduct Committee may be considered as gross professional misconduct.

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